IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1718 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARAMROJ NAVALSHA RAIMALWALA

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 1718 of 1988
MR JR NANAVATI for the appellants
Mr.B.Y. Mankad, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 10/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellants-original claimants have filed this First Appeal under Section 54 of the Land Acquisition Act, 1894 (to be referred to as "Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, for enhancement of compensation by challenging the judgment and award dated March 30, 1988 passed by the learned Joint District Judge, Valsad, at Navsari, in Land Reference Case No.1 of 1982.

2. The appellants are the owners of the agricultural lands bearing Survey Nos.94, 95-paiki, 96, 97, 98, 100, 101 and 105 situated at Raimal, Taluka: Dharampur, District Valsad. The said lands came to be placed under acquisition by the State of Gujarat for the public purpose of 'Daman Ganga' project. Notification under Section 4(1) of the Act was published in the government gazette on May 10, 1979. After following the usual procedure, the Land Acquisition Officer issued notices to the claimants under Section 9 of the Act on April 1, 1980. The Land Acquisition Officer, on the basis of the material produced before him, made his award on August 11, 1980, and offered compensation for the acquired lands at the rate of Rs.18/- per Are for grass land; Rs.22/per Are for jirayat land, and Rs.32/- per Are for kyari land. The Land Acquisition Officer had also offered compensation for small Khajoor trees at the rate of Rs.2/- per tree, and Rs.15/- per tree for big Khajoor trees. The Land Acquisition Officer had offered compensation of Rs.22,987.78 ps for the acquired lands and the trees standing thereon.

3. The claimants, being dissatisfied with the award of the Land Acquisition Officer, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer their application to the District Court for determination of the compensation. Accordingly, the said application was referred to the District Court, Valsad, where, it came to be numbered as Land Acquisition Reference No. 1 of 1982. On behalf of the claimants, Navalsha Shavaksha Raimalwala was examined at Exh.37. He produced revenue record of the acquired lands and copy of the judgment rendered in Civil Revision Application No.261 of 1974 at Exh.47. Xerox copy of the sale deed dated June 16, 1969, was produced at Exh.69. The Reference Court rejected the documentary evidence Exh.69 on the ground that the said document was not reliable for the purpose of determination of the market value of the acquired lands. As there was no other reliable evidence produced by the claimants for the purpose of determination of the market value of the acquired lands,

the Reference Court was left with no other alternative, but to resort to 'yield method'. The claimant had deposed that crop of sugarcane was grown in all the acquired lands, except Survey No.94. The Reference Court, by relying upon the oral evidence of the claimant, came to the conclusion that the claimants were getting income of Rs.1350/- out of the crop of sugarcane. However, the Reference Court had deducted an amount of Rs.1000/- as cost of cultivation and came to the conclusion that the net profit from the crop of sugar-cane would be Rs.350/- per hectare. The Reference Court applied multiplier of 20 and determined the market value of the acquired lands, on which the crop of sugarcane was raised, at Rs.7000/- per Hectare. However, the Reference Court, without assigning any reason, fixed the market value of the acquired lands, on which the crop of sugarcane was raised, at Rs.6000/- per Hectare.

4. The appellants have challenged the impugned judgment and award by filing this appeal and have claimed enhanced compensation.

5. Learned advocate for the appellants-original claimants has vehemently submitted that the lands under acquisition were more fertile and it would have fetched more price and, therefore, the claimant should be awarded compensation of the acquired lands at the rate of Rs.15,000/- per Hectare for jirayat land and Rs.20,000/per Hectare for kyari lands. In our opinion, the submission of the learned advocate for the appellant deserves to be rejected. The claimants were in the position of the plaintiffs and it was their duty to lead cogent and reliable evidence in support of their claim of enhanced compensation. No such evidence was placed in support of the enhanced compensation and, therefore, the Reference Court was justified in resorting to yield method for the purpose of determining the market value of the acquired lands.

6. Learned AGP, Mr. B.Y. Mankad, has submitted that, when the Reference Court had resorted to yield method for arriving at the market value of the acquired lands, the proper multiplier would have been ten, and not twenty. He submitted that the Reference Court had calculated Rs.1350/- as gross income of the sale of sugarcane crop per hectare, and, as per the decision of the Supreme Court in the case of State of Gujarat vs. Rama Rana, reported in AIR 1997 Supreme Court 1845, the cost of cultivation should be taken as 50%. If 50% for

cost of cultivation is deducted from the amount of Rs.1350/-, the net income would be Rs.675/- per Hectare. In the case of Rama Rana (supra), the Supreme Court had laid down the principle that, normally, multiplier of 10 should be applied in computation of capitalisation of value of agricultural land when the Court resorts to 'yield method' for the purpose of determining the market value of the acquired lands. If the multiplier of ten is applied to the net income of Rs.675/- per Hectare, the total price of the acquired lands would come to Rs.6750/per Hectare. Therefore, we determine the market value of the acquired land at Rs.6750/- per Hectare on the relevant date.

7. As a result of foregoing discussion, the appellants-original claimants shall be entitled to compensation for the acquired lands at the rate of Rs.6750.00 per Hectare for 6 Hectare 18 Are 9 sq.mtrs. of the acquired land, where, crops of sugarcane and paddy were raised. The claimants shall be entitled to Rs.1800/- per Hectare for 4 Acre 38 Are and 2 sq.mtrs of acquired lands where only grass was grown. The compensation awarded by the Reference Court for the trees standing on the acquired lands is hereby confirmed. The claimants shall be entitled to solatium at the rate of 30% on the enhanced amount of compensation along with interest on the amount of solatium as per the decision of the Supreme Court in the case of Sunder vs. Union of India, reported JT 2001 (8) SC 130. The award of the Reference Court stands modified to the extent indicated above. This appeal is partly allowed with no order as to costs. Decree accordingly.

April 10, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)
(swamy)